

# **EXHIBIT O**

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**From:** Carl Covert  
**Sent:** Monday, June 7, 2021 10:37 AM CDT  
**To:** Carl Covert  
**Subject:** Re: My client: John Spertus (SAQ-7)  
**Attachments:** WK Permission Agreement copy.pdf

**WARNING:** This message has originated from an External Source. This may be a phishing expedition that can result in unauthorized access to our IT System. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Mr. Pitcher:

Although I haven't received a response to my email of May, 28; I thought I would let you know that we have received a copy of standard Wolters Kluwer license ("License") for use of journal materials. I have attached a copy for your information. Based on the License terms, it seems that Epic may be out of compliance with the License. For example Section 10 states that "Modifications: With the exception of text size or color, no Wolters Kluwer material is permitted to be modified or adapted without publisher approval." Clearly the adaptation of the SAQ-7 to a computer format would be outside the scope of this agreement. Additionally, if the entire article was subject to the License, use of the SAQ-7 alone would be a modification of the License.

Please review the material and my previous email and kindly provide a response.

Regards,

Carl Covert

**Carl W. Covert, Jr.**  
Attorney at Law  
2313 Lockhill-Selma  
Suite 250  
San Antonio, Texas 78230  
Licensed State Bars of Texas and Florida

Email: [carlwcovert@gmail.com](mailto:carlwcovert@gmail.com)

Tel: 210-493-0303

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SPER000018

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**From:** Carl Covert <carlwcovert@gmail.com>

**Date:** Friday, May 28, 2021 at 1:50 PM

**To:** John Pitcher <jpitcher@epic.com>

**Subject:** Re: My client: John Spertus (SAQ-7)

Mr. Pitcher:

Thank you for your response.

At this point, we are reluctant in providing you the identity of source. However, the information we received in the email is as follows:

***" This is from our analyst in IS, who just got back from PTO:***

***"We did build the SAQ-7 scoring as EPIC does not provide scoring on some QNRs. We worked with our EPIC TS on this QNR build and he had code used for another organization that we also used."***

***So, basically, Epic is not actually providing scoring "out of the box", but they are actively helping customers who want to add scoring by providing technical support, sharing code, etc. – which is almost the same thing."***

Additionally, you may recall that my client discussed licensing both the SAQ and KCCQ with Leah Johnson from your company. They had discussed using my client's standard ICHOM licensing fees, which she thought was fair. However, Brian Benz then became involve and he took the position that Epic would not license the instrument on behalf of their clients. He stated that "if a license was issued to the client, Epic would help provide them the code if they had a valid license." It was also agreed that my client would be responsible to be sure that the licenses were up to date and that Epic would provide a report about which sites were using the tools. However, the agreement we were working on fell apart as Epic required that my client indemnify Epic if there was any problem with Epic's scoring. We were willing to indemnify Epic for the instrument itself; but not for its implementation with your EHR. Epic would not agree and no agreement was executed. Despite that, it appears that Epic now is assisting customers in providing the scoring tools without confirmation as to whether they have a valid license or not.

We have requested that Epic be more transparent in this matter which affects my client's assessment, specifically, we would like a full accounting of the number of Epic customer's using either the KCCQ or SAQ, the number that Epic has helped operationalize the scoring for, and the number of times my client's instruments have been.

Sincerely,

Carl Covert

**Carl W. Covert, Jr.**

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**From:** John Pitcher <[jpitcher@epic.com](mailto:jpitcher@epic.com)>  
**Date:** Wednesday, May 26, 2021 at 5:20 PM  
**To:** Carl Covert <[carlwcovert@gmail.com](mailto:carlwcovert@gmail.com)>  
**Subject:** RE: My client: John Spertus (SAQ-7)

Thanks for your email, Carl. There are no configured scoring rules linked to the SAQ in the Foundation System. It may be the case that a particular Epic customer configured their system in a manner not released by Epic. However, without knowing who reported this, we don't have a readily available way of determining if and where this might be occurring. If you let us know the name and place of work of the individual who "confirm[ed] that their use of the Epic-provided SAQ does return the scores," we may be able to investigate the source of his or her claim.

Further, it might be helpful for Epic to have a discussion with that customer to better understand the value he or she sees in the scoring rules and help Epic determine if it would make sense to license this content from Dr. Spertus. If it does appear that there is a desire among the Epic community to have scoring built out in the Foundation System, it would also be helpful to understand Dr. Spertus's expectations on what he sees as a fair price to license the scoring rules.

Sincerely,  
John

John Pitcher  
**Epic | Legal**  
[jpitcher@epic.com](mailto:jpitcher@epic.com)

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**From:** Carl Covert <carlwcovert@gmail.com>  
**Sent:** Wednesday, May 19, 2021 11:45 AM  
**To:** John Pitcher <jpitcher@epic.com>  
**Subject:** Re: My client: John Spertus (SAQ-7)

**External Mail.** Careful of links / attachments. Submit Helpdesk if unsure.

Dear Mr. Pitcher:

Thank you for your response. However, we became aware of this issue when one of your clients wrote Dr. Spertus to inquire about licensing the KCCQ and noted that they already were using the SAQ, as it is provided by Epic. When he asked about their access to the SAQ *and its scores*, they forwarded the document I sent to you. Dr. Spertus reached back out to them and they did confirm that their use of the Epic-provided SAQ does return the scores (and they also expressed a new concern as to whether or not those scores were accurate). I would hope that you would confirm with your colleagues that they are providing scores. As we have mentioned in the past, my client would be happy to work with Epic to have the SAQ (and KCCQ) properly licensed and scored so that your clients can have access to these important clinical data. However, if Epic chooses not to do work with us, then we insist that the SAQ no longer be offered by Epic to your clients. They have the option to license the tools from Dr. Spertus and build it within their Epic implementations. This is, however, a burden on your customers and we believe that it would be advantageous to have Epic offer the tools – properly scored and presented into the EMR – to its clients.

Sincerely,

Carl Covert

**Carl W. Covert, Jr.**  
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SPER000021



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**From:** John Pitcher <[jpitcher@epic.com](mailto:jpitcher@epic.com)>  
**Date:** Monday, May 17, 2021 at 4:17 PM  
**To:** Carl Covert <[carlwcovert@gmail.com](mailto:carlwcovert@gmail.com)>  
**Subject:** RE: My client: John Spertus (SAQ-7)

Dear Mr. Covert:

Thank you for your email. As I stated in August 2019, Epic does not provide its customers with scoring rules or algorithms for the SAQ-7 in its software. That statement was true then, and it is true now. The contention in your May 5 letter that “[c]learly, Epic is offering scoring rules and the algorithm for the SAQ-7 in its software” is wrong and ignores all of the language around which the word “calculations” appears in the enclosed document. The Scales and Assessment Tools Collection document accurately states that Epic provides certain third-party tools (including the SAQ-7) in its Foundation System at no cost. Then, it reads:

*“In addition to these third-party tools, we provide basic calculations for vitals, including, percent weight change, ideal body weight, body mass index (BMI), body surface area (BSA), mean blood pressure, burn percentage, change in wound size, total parenteral nutrition calorie estimates, and apnea totals.”*  
(Emphasis supplied).

Nowhere does it say that we provide calculations for all of the third-party tools listed in the Scales and Assessment Tools Collection document, because that would be inaccurate. I trust this adequately resolves your concerns.

Sincerely,  
John

John Pitcher  
**Epic** | Legal  
[jpitcher@epic.com](mailto:jpitcher@epic.com)

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**From:** Carl Covert <[carlwcovert@gmail.com](mailto:carlwcovert@gmail.com)>  
**Date:** Wednesday, May 5, 2021 at 4:40 PM  
**To:** "[jpitcher@epic.com](mailto:jpitcher@epic.com)" <[jpitcher@epic.com](mailto:jpitcher@epic.com)>  
**Subject:** My client: John Spertus (SAQ-7)

Dear Mr. Pitcher:

Please see the attached letter which has been mailed today.

Sincerely,

Carl Covert

**Carl W. Covert, Jr.**

Attorney at Law

2313 Lockhill-Selma

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